

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF VIRGINIA

3 ROBERT A. FALISE; LOUIS KLEIN, JR.;
4 FRANK MACCHIAROLA; AND CHRISTIAN E. MARKEY,
5 JR., AS TRUSTEES,
6 Plaintiff,
7 CASE NO.
8 -vs- 99-7392 (JBW) (E.D. NY)
9 THE AMERICAN TOBACCO COMPANY;
10 R.J. REYNOLDS TOBACCO COMPANY; B.A.T.
11 INDUSTRIES, PLC; BROWN & WILLIAMSON
12 TOBACCO CORPORATION; PHILIP MORRIS
13 INCORPORATED; LIGGETT GROUP, INC.;
14 LORILLARD TOBACCO COMPANY,
15 Defendants.
16 *****

17 VIDEO DEPOSITION OF THOMAS S. OSDENE
18 3:00 p.m. - 4:09 p.m.
19 July 10, 2000
20 Richmond, Virginia
21
22
23
24

25 REPORTED BY: Lisa M. Blair, Court Reporter

1 Video deposition of THOMAS S. OSDENE, taken
2 and transcribed on behalf of the Plaintiffs, by
3 and before Lisa M. Blair, Court Reporter, Notary
4 Public in and for the Commonwealth of Virginia at
5 large, pursuant to Rule 30 of the Federal Rules of
6 Civil Procedure, and by Notice to Take
7 Depositions; commencing at 3:01 p.m., July 10,
8 2000, at the offices of Mays & Valentine, 1111
9 East Main Street, Richmond, Virginia.
10

11 APPEARANCES OF COUNSEL:
12

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24 ALSO PRESENT: Gordon Croll, Videographer
25 //

4

1 I N D E X
2 WITNESS:
3 THOMAS S. OSDENE
4 Examination by Mr. Westbrook.....6, 62
5 Examination by Mr. Molster.....26
6
7

E X H I B I T S

8	9	NUMBER	DESCRIPTION	MARKED:
10	1	Subpoena	5	
	2	Memo from H. Wakeham, 3-7-68	5	
11	3	Batco report	5	
	4	Review by Selikoff, 7-12-80	5	
12	5	A note from TSO, 9-27-82	5	
	6	Letter from Prof. Abood, 3-11-83	5	
13	7	Memo from H. Wakeham, 8-23-73	16	
	8	Letter from M. Szymanczyk, 5-23-00	63	
14	9	Letter from G. Nunes, 3-15-00	63	

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1 (July 10, 2000, 3:01 p.m.)
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5 (Osdene Exhibit Numbers 1, 2, 3, 4, 5 and 6
6 marked for identification)
7

8 THE VIDEOGRAPHER: All right. This is
9 the deposition of Thomas Osdene, taken on
10 behalf of the plaintiff. My name is Gordon
11 Croll of Cavalier Recording and Videography,
12 Incorporated; 677 Berkmar Circle,
13 Charlottesville Virginia. The court reporter
14 is Lisa Blair.

15 Would counsel please identify
16 themselves now for the record.

17 MR. WESTBROOK: Edward Westbrook from
18 Ness Motley for the plaintiffs.

19 MR. NUNES: My name is Gary Nunes from
20 the Jefferson Law Firm in McLean, Virginia,
21 representing Dr. Thomas Osdene.

22 MR. MOLSTER: Charles -- go ahead,
23 Kerry.

24 MS. GREY: Kerry Grey of Hunton and
25 Williams on behalf of Philip Morris.

6

1 MR. MOLSTER: Charles Molster from
2 Winston and Strawn on behalf of Philip
3 Morris.

4 THE VIDEOGRAPHER: Thank you. And the
5 date is July 10th, Year 2000. And the
6 approximate time is 3:01 p.m.

7 Would the reporter please swear in the
8 witness.
9

10
11
12 THOMAS S. OSDENE,
13 was sworn and testified as follows:

14 E X A M I N A T I O N

15 BY MR. WESTBROOK:

16 Q. Dr. Osdene, my name is Ed Westbrook,
17 and I represent the plaintiffs. I'm going to hand
18 you, sir, Exhibit Number 1 -- which is a subpoena
19 for your deposition in this case -- and ask you to
20 take a look at it, please, sir.

21 A. The glasses in the inside pocket. I'm
22 sorry. I should have thought of that. Thank you.

23 Q. Dr. Osdene, looking at Exhibit 1, the
24 subpoena for your deposition in this case, the
25 subpoena requests that you bring, quote, "All

7

1 documents in your possession, custody or control
2 discussing asbestos, asbestos tobacco synergy, or
3 asbestos-related disease."

4 Have you brought any such documents,
5 Doctor?

6 A. No.

7 Q. Doctor, while you were at Philip
8 Morris, did you destroy any documents relating to
9 asbestos, asbestos tobacco synergy, or
10 asbestos-related disease?

11 A. On the advice of counsel, I
12 respectfully decline to answer based on my Fifth
13 Amendment privilege.

14 Q. Dr. Osdene, while you were working at

15 Philip Morris beginning in 1965, when did you
16 first hear about a synergistic relationship
17 between asbestos and smoking in causing lung
18 cancer?
19 MR. MOLSTER: Objected to form.
20 THE WITNESS: On the advice of counsel,
21 I respectfully decline to answer based on my
22 Fifth Amendment privilege.
23 BY MR. WESTBROOK:
24 Q. Dr. Osden, was Philip Morris aware of
25 a synergistic relationship between asbestos and

8

1 smoking in causing lung cancer before Dr. Selikoff
2 published his studies on the subject in 1968?
3 MR. MOLSTER: Same objection.
4 THE WITNESS: On the advice of counsel,
5 I respectfully decline to answer based on my
6 Fifth Amendment privilege.
7 BY MR. WESTBROOK:
8 Q. Did Philip Morris engage in studies
9 trying to place the blame for lung cancers in
10 smoking asbestos workers on their asbestos
11 exposure instead of on their smoking?
12 MR. MOLSTER: Same objection.
13 THE WITNESS: On the advice of counsel,
14 I respectfully decline to answer based on my
15 Fifth Amendment privilege.
16 BY MR. WESTBROOK:
17 Q. Did Philip Morris ship any documents
18 concerning the synergistic relationship between
19 asbestos and smoking to Europe to avoid their
20 being discovered in U.S. court proceeding?
21 MR. MOLSTER: Same objection.
22 THE WITNESS: On the advice of counsel,
23 I respectfully decline to answer based on my
24 Fifth Amendment privilege.
25 BY MR. WESTBROOK:

9

1 Q. Dr. Osden, did you direct that
2 research reports from Philip Morris' scientists in
3 Europe, on sensitive subjects such as synergy, be
4 shipped to your home where you would review them
5 and then destroy the documents?
6 MR. MOLSTER: Same objection.
7 THE WITNESS: On the advice of counsel,
8 I respectfully decline to answer based on my
9 Fifth Amendment privilege.
10 BY MR. WESTBROOK:
11 Q. Dr. Osden, did you play any role in
12 Philip Morris not advising asbestos-exposed
13 individuals that they were at a higher risk for
14 lung cancer if they smoked?
15 MR. MOLSTER: Same objection.
16 THE WITNESS: On the advice of counsel,
17 I respectfully decline to answer based on my
18 Fifth Amendment privilege.
19 BY MR. WESTBROOK:
20 Q. Dr. Osden, is it true that Philip
21 Morris had an asbestos removal program for its own
22 facilities which incorporated requirements that
23 workers be warned about the synergistic
24 relationship between asbestos and smoking while
25 they were working at Philip Morris facilities?

1 A. On the advice of counsel, I
2 respectfully decline to answer based on my Fifth
3 Amendment privilege.

4 Q. Dr. Osdene, while you were employed at
5 Philip Morris, when did you personally accept the
6 fact that there was a synergistic relationship
7 between smoking and asbestos in causing lung
8 cancer?

9 MR. MOLSTER: Object to the form.

10 THE WITNESS: On the advice of counsel,
11 I respectfully decline to answer based on my
12 Fifth Amendment privilege.

13 BY MR. WESTBROOK:

14 Q. Dr. Osdene, did Philip Morris delay
15 acknowledging publicly the synergistic
16 relationship between smoking and asbestos exposure
17 because of concern that asbestos workers would
18 stop smoking, and Philip Morris would lose sales?

19 MR. MOLSTER: Object to the form.

20 THE WITNESS: On the advice of counsel,
21 I respectfully decline to answer based on my
22 Fifth Amendment privilege.

23 BY MR. WESTBROOK:

24 Q. After Dr. Selikoff published his 1979
25 study concerning the increased risk of cancer for

11

1 those who smoked and were exposed to asbestos, did
2 you direct that Philip Morris have its own
3 facilities inspected for asbestos?

4 MR. MOLSTER: Object to the form.

5 THE WITNESS: On the advice of counsel,
6 I respectfully decline to answer based on my
7 Fifth Amendment privilege.

8 BY MR. WESTBROOK:

9 Q. Dr. Osdene, after Dr. Selikoff's 1979
10 article was published, was Philip Morris concerned
11 that asbestos from insulation in its plants could
12 be flaking off and getting into the tobacco that
13 was going into cigarettes?

14 MR. MOLSTER: Same objection.

15 THE WITNESS: On the advice of counsel,
16 I respectfully decline to answer based on my
17 Fifth Amendment privilege.

18 BY MR. WESTBROOK:

19 Q. Dr. Osdene, let me hand you Exhibit 2,
20 a March 7th, 1968 memo from Helmut Wakeham to
21 Mr. Goldsmith of your company.

22 A. (Witness perusing document).

23 Q. Dr. Osdene, I'm going to ask you about
24 a passage on pages three and four, but you're
25 welcome to look at any part in answering my

12

1 question, sir. But let me pose the question, and
2 then you can look at any part you would like.

3 In this March 7th, 1968 document,
4 Mr. Wakeham says to Mr. Goldsmith, beginning on
5 the bottom of page three, after reviewing some
6 studies, quote, "These studies will provide a
7 background for two other broad studies which the
8 tobacco industry may someday wish to initiate,
9 colon, and then (A) A review of epidemiological
10 evidence relating human ailments to environmental

11 and behavioral factors with the aim of revealing
12 other areas which can be investigated to find to
13 what extent human ailments are really due to
14 smoking, and what are due to other causes. An
15 outgrowth of this study might be an attempt to
16 define in some manner those elements of the
17 population who, like asbestos industry workers,
18 are more likely to encounter serious risk by
19 smoking, and who, therefore, should be discouraged
20 from indulging the habit."

21 Dr. Osdene, did Philip Morris ever do
22 such a study to determine which elements of the
23 population, like asbestos workers, should be
24 discouraged from smoking?

25 MR. MOLSTER: Object to the form.

13

1 THE WITNESS: On the advice of counsel,
2 I respectfully decline to answer based on my
3 Fifth Amendment privilege.

4 BY MR. WESTBROOK:

5 Q. Dr. Osdene, how long before this March
6 7th, 1968 document was written by Mr. Wakeham, had
7 Philip Morris known that asbestos industry workers
8 were among the elements of the population who were
9 more likely to encounter serious risk by smoking,
10 and who, therefore, should be discouraged from
11 indulging the habit?

12 MR. MOLSTER: Same objection.

13 THE WITNESS: On the advice of counsel,
14 I respectfully decline to answer based on my
15 Fifth Amendment privilege.

16 BY MR. WESTBROOK:

17 Q. Dr. Osdene, let me hand you Exhibit 3,
18 which is a March 11th, 1970 memorandum produced to
19 us from the British Tobacco Company, Batco, and
20 entitled, quote, "Supplementary Report on
21 discussions with Osdene (Philip Morris)."

22 Dr. Osdene, if you would take a look at
23 that, I'm going to ask you some questions about
24 Paragraph B and Paragraph F, sir.

25 A. (Witness perusing document)

14

1 Q. Dr. Osdene, did you, in fact, meet with
2 representatives of the British American Tobacco
3 Company in the spring of 1970?

4 MR. MOLSTER: I object to the form to
5 the extent that it includes your preamble
6 about the identification of the document.

7 THE WITNESS: On the advice of counsel,
8 I respectfully decline to answer based on my
9 Fifth Amendment privilege.

10 BY MR. WESTBROOK:

11 Q. Dr. Osdene, in Paragraph B, the author
12 of this memo reports on his discussions with you
13 as follows, under the topic "Relations with
14 Lawyers, et cetera," quote, "Osdene believes that
15 the lawyers group has greater group loyalty than
16 company loyalty. He particularly distrusts the,
17 quote, 'ad hoc legal advisor group,' unquote,
18 comprising Ed Jacob and Dave Hardy, but foresees a
19 waning of their influence in the future," unquote.

20 Dr. Osdene, do you recall telling the
21 British American Tobacco Company representatives

22 that you particularly distrusted Ed Jacob and Dave
23 Hardy, two lawyers who represented tobacco
24 companies?

25 MR. MOLSTER: Object to the form.

15

1 THE WITNESS: On the advice of counsel,
2 I respectfully decline to answer based on my
3 Fifth Amendment privilege.

4 BY MR. WESTBROOK:

5 Q. Dr. Osdene, under Paragraph F entitled,
6 "Relations with the CTR," the memorandum states,
7 quote, "These could scarcely be worse! Osdene's
8 view (Philip Morris' view?) was that the CTR did
9 virtually no useful work, and cost a vast amount
10 of money."

11 Dr. Osdene, was it your view in the
12 spring of 1970 that CTR had done virtually no
13 useful work?

14 MR. MOLSTER: Object to the form.

15 THE WITNESS: On the advice of counsel,
16 I respectfully decline to answer based on my
17 Fifth Amendment privilege.

18 BY MR. WESTBROOK:

19 Q. And Dr. Osdene, going down in that
20 paragraph several lines, it states, quote, "Furst,
21 F-U-R-S-T, was described as a, quote, 'reasonable
22 second rater,' unquote.

23 Do you recall telling the British
24 American Tobacco Company visitors that Dr. Furst
25 was a reasonable second rater?

16

1 MR. MOLSTER: Same objection.

2 THE WITNESS: On the advice of counsel,
3 I respectfully decline to answer based on my
4 Fifth Amendment privilege.

5 BY MR. WESTBROOK:

6 Q. Dr. Osdene, let me show you Exhibit 4,
7 a July 12th, 1980 memo from Dr. P.M. Lee, entitled
8 "Asbestos and Cigarette Smoking."

9
10 (Osdene Exhibit Number 7 marked for
11 identification)

12
13 BY MR. WESTBROOK:

14 Q. Dr. Osdene, did you know Dr. Lee as a
15 consultant for the British American Tobacco
16 Company in or around 1980?

17 MR. MOLSTER: Object to the form.

18 THE WITNESS: On the advice of counsel,
19 I respectfully decline to answer based on my
20 Fifth Amendment privilege.

21 BY MR. WESTBROOK:

22 Q. Dr. Osdene, this memo reports on
23 Dr. Lee's review of two papers by Dr. Selikoff's
24 group concerning asbestos exposure and cigarette
25 smoking. In or about July of 1980, were you

17

1 similarly aware of the existence of these two
2 papers by Dr. Selikoff?

3 MR. MOLSTER: Same objection.

4 THE WITNESS: On the advice of counsel,
5 I respectfully decline to answer based on my
6 Fifth Amendment privilege.

7 BY MR. WESTBROOK:
8 Q. Dr. Osdene, I'd like to read to you a
9 portion of what Dr. Lee had to say in this memo
10 after reviewing Dr. Selikoff's studies. And
11 that's on page 9, as follows, quote "Be that as it
12 may, the enormous lung cancer rates in asbestos
13 workers who smoke are justification enough for the
14 facts to be brought forcefully to the attention of
15 asbestos workers, as the author suggests. The
16 health warning on the packet in the UK may be
17 adequate safeguard to ensure the average smoker
18 knows the problems he may face. Whether this is
19 so for the asbestos worker is very much open to
20 doubt. The tobacco industry should consider
21 whether it might take further steps to ensure the
22 lethal smoking slash asbestos combination is
23 avoided," unquote.
24 Dr. Osdene, did Philip Morris ever take
25 any steps to ensure that the lethal smoking
18
1 asbestos combination was avoided in workers both
2 exposed to asbestos and who smoked?
3 MR. MOLSTER: I object to the form.
4 THE WITNESS: On the advice of counsel,
5 I respectfully decline to answer based on my
6 Fifth Amendment privilege.
7 BY MR. WESTBROOK:
8 Q. Dr. Osdene, let me hand you Exhibit 5,
9 entitled, "A note from Thomas S. Osdene," dated
10 September 27th, 1982.
11 A. (Witness perusing document).
12 Q. Dr. Osdene, on the front page of this
13 exhibit, there's a note "F.Y.I. Please return,"
14 with the initials TSO and the date 9-27-82.
15 Dr. Osdene, did you write that note,
16 and is that your signed initials?
17 MR. MOLSTER: Object to the form.
18 THE WITNESS: On the advice of counsel,
19 I respectfully decline to answer based on my
20 Fifth Amendment privilege.
21 BY MR. WESTBROOK:
22 Q. Dr. Osdene, on the front page of this
23 document, the word "asbestos" has been handwritten
24 and underlined. Did you write the word "asbestos"
25 on this document and underline it?
19
1 A. On the advice of counsel, I
2 respectfully decline to answer based on my Fifth
3 Amendment privilege.
4 Q. Dr. Osdene, while you were at Philip
5 Morris did you keep a file marked asbestos?
6 A. On the advice of counsel, I
7 respectfully decline to answer based on my Fifth
8 Amendment privilege.
9 Q. Dr. Osdene, while you were at Philip
10 Morris did you destroy any documents out of the
11 file that you kept which was marked asbestos?
12 MR. MOLSTER: Object to the form.
13 THE WITNESS: On the advice of counsel,
14 I respectfully decline to answer based on my
15 Fifth Amendment privilege.
16 BY MR. WESTBROOK:
17 Q. Dr. Osdene, if you would turn over two

18 pages to the attachment to your cover page to the
19 memo that was attached to this cover page, which
20 is entitled "Asbestos and Health dash UK."
21 Dr. Osdene, do you admit that you
22 received the attachment "Asbestos and Health UK,"
23 dated September 17th, 1982, which was attached to
24 your cover memo of 9-27-82, to which you entitled
25 "asbestos?"

20

1 MR. MOLSTER: Object to the form.
2 THE WITNESS: On the advice of counsel,
3 I respectfully decline to answer based on my
4 Fifth Amendment privilege.
5 BY MR. WESTBROOK:
6 Q. Dr. Osdene, do you agree that the
7 attachment to your September 27th, 1982 memo
8 marked "asbestos" discussed synergy between
9 cigarette smoke and exposure to asbestos?
10 MR. MOLSTER: Same objection.
11 THE WITNESS: On the advice of counsel,
12 I respectfully decline to answer based on my
13 Fifth Amendment privilege.
14 BY MR. WESTBROOK:
15 Q. Dr. Osdene, what, if anything, did
16 Philip Morris do after it got the article attached
17 to your memo to advise United States workers of
18 the increased risk from smoking and asbestos
19 exposure?
20 MR. MOLSTER: Object to the form.
21 THE WITNESS: On the advice of counsel,
22 I respectfully decline to answer based on my
23 Fifth Amendment privilege.
24 BY MR. WESTBROOK:
25 Q. Dr. Osdene, is it true that in 1982

21

1 when Philip Morris, through you, received this
2 memo, that Philip Morris was denying publicly that
3 there was any synergy between exposure to asbestos
4 and smoking cigarettes?
5 MR. MOLSTER: Same objection.
6 THE WITNESS: On the advice of counsel,
7 I respectfully decline to answer based on my
8 Fifth Amendment privilege.
9 BY MR. WESTBROOK:
10 Q. Dr. Osdene, let me show you Exhibit 6,
11 which is a March 11th -- it appears -- 1985 letter
12 from Professor Abood, A-B-O-O-D, to T.S. Osdene at
13 Philip Morris, bearing a stamp "T.S. Osdene, March
14 13th, 1985" as a received stamp.
15 Dr. Osdene, did you receive this letter
16 from Dr. Abood in 1985?
17 A. On the advice of counsel, I
18 respectfully decline to answer based on my Fifth
19 Amendment privilege.
20 Q. Dr. Osdene, I want to ask you about the
21 middle paragraph of this document where Dr. Abood
22 writes to T.S. Osdene of Philip Morris, quote, "In
23 a recent issue of O and EN, there was an
24 informative article on asbestos toxicity. The
25 enclosed table taken from this article refers to

22

1 morbidity data taken on smokers and nonsmokers
2 exposed to asbestos. The question arises as to

3 whether the higher quote, 'cancer', unquote risk
4 is due to tobacco, or merely to the fact that
5 smoking entails more inspiration of the
6 contaminated ambient air. It is conceivable that
7 the inhalation patterns associated with smoking
8 make a worker more vulnerable to a variety of
9 innumerable toxic elements in the ambient air."

10 MR. MOLSTER: Ed, I'm sorry. You said
11 "worker." I think you meant "smoker."

12 BY MR. WESTBROOK:

13 Q. Let me repeat that. Let me start the
14 paragraph over, Doctor.

15 Dr. Abood writes to T.S. Osdene quote,
16 "In a recent issue of O and EN, there was an
17 informative article on asbestos toxicity. The
18 enclosed table taken from this article refers to
19 morbidity data taken on smokers and nonsmokers
20 exposed to asbestos. The question arises as to
21 whether the higher quote, 'cancer,' unquote risk
22 is due to tobacco, or merely to the fact that
23 smoking entails more inspiration of the
24 contaminated ambient air. It is conceivable that
25 the inhalation patterns associated with smoking

23

1 make a smoker more vulnerable to a variety of
2 innumerable toxic elements in the ambient air.
3 Before a case can be made for the deleterious
4 constituents of tobacco smoke contributing to lung
5 cancer and emphysema, one needs to resolve the
6 issue of the impact of air pollutants. It seems
7 likely, however, that smoking augments the
8 exposure to air pollutants."

9 Dr. Osdene, after receiving this
10 letter, did Philip Morris ever fund Dr. Abood or
11 any other researcher to see which of the effects
12 of smoking caused increased lung cancer in
13 asbestos-exposed individuals?

14 MR. MOLSTER: Object to the form.

15 THE WITNESS: On the advice of counsel,
16 I respectfully decline to answer based on my
17 Fifth Amendment privilege.

18 BY MR. WESTBROOK:

19 Q. Dr. Osdene, let me show you Exhibit 7,
20 sir.

21 MR. MOLSTER: I don't think I have 7,
22 Ed. I just got 1 through 6.

23 MR. WESTBROOK: (Hands document to
24 counsel)

25 Chip, it was in the pack. I just

24

1 missed it when I flipped it through the pile.

2 MR. MOLSTER: Yeah. No. I understand
3 that.

4 MR. WESTBROOK: Okay.

5 MR. MOLSTER: We just need to run it
6 through the machine. I think it's unlikely
7 that it is a violate document, but go ahead.

8 BY MR. WESTBROOK:

9 Q. Dr. Osdene, directing your attention to
10 Exhibit 7, an August 23rd, 1973 letter from
11 R. Fagan to Dr. Wakeham of Philip Morris, on the
12 first page under "a. Epidemiology," Mr. Fagan
13 states, quote, "Occupational synergy is suggested.

14 Aside from the well-known ones of asbestos,
15 radioactive dust and gases, Sommers believes
16 others should be looked for retrospectively,"
17 unquote.

18 With respect to the portion of that
19 sentence, Doctor, that said that the well-known
20 synergies included asbestos, how long before
21 August 23rd, 1973 when this internal Philip Morris
22 memo was written had Philip Morris known that
23 asbestos had a well-known synergistic relationship
24 in causing cancer?

25 MR. MOLSTER: Object to the form.

25

1 THE WITNESS: On the advice of counsel,
2 I respectfully decline to answer based on my
3 Fifth Amendment privilege.

4 BY MR. WESTBROOK:

5 Q. Dr. Osdene, as you sit here today in
6 the Year 2000, do you have any regrets that Philip
7 Morris did not advise smokers exposed to asbestos
8 of the increased risk that they faced?

9 MR. MOLSTER: Object to the form.

10 THE WITNESS: On the advice of counsel,
11 I respectfully decline to answer based on my
12 Fifth Amendment privilege.

13 BY MR. WESTBROOK:

14 Q. Dr. Osdene, do you have any regrets
15 that Philip Morris publicly denied the existence
16 of a synergistic relationship between asbestos and
17 smoking in causing lung cancer throughout the
18 1980s and into the 1990s?

19 MR. MOLSTER: Object to the form, lack
20 of foundation.

21 THE WITNESS: On the advice of counsel,
22 I respectfully decline to answer based on my
23 Fifth Amendment privilege.

24 BY MR. WESTBROOK:

25 Q. Dr. Osdene, is there anything you would

26

1 like to tell this jury about Philip Morris'
2 knowledge of the synergistic relationship between
3 asbestos and smoking in causing lung cancer?

4 MR. MOLSTER: Object to the form.

5 THE WITNESS: On the advice of counsel,
6 I respectfully decline to answer based on my
7 Fifth Amendment privilege.

8 MR. WESTBROOK: Nothing further.

9 MR. NUNES: Short break.

10 MR. MOLSTER: Yeah.

11 THE VIDEOGRAPHER: Okay. The time is
12 approximately 3:25 p.m., and we are off the
13 record.

14
15 (Discussion off the record)

16
17 The time is approximately 3:31 p.m.,
18 and we are back on the record.

19

20

21

22 E X A M I N A T I O N

23 BY MR. MOLSTER:

24 Q. Dr. Osdene, as indicated earlier, my

25 name is Charles Molster, and I represent Philip
1 Morris. And I'd like to ask you a few questions,
2 as well.

27

3 First of all, Doctor, is it true that
4 during the time of -- during the entire time of
5 your employment at Philip Morris, you never
6 violated the law in carrying out your duties?

7 A. On the advice of counsel, I
8 respectfully decline to answer based on my Fifth
9 Amendment privilege.

10 Q. Is it also true, Doctor, that as you
11 sit here now, you are not aware of any other
12 Philip Morris employee ever violating the law?

13 A. On the advice of counsel, I
14 respectfully decline to answer based on my Fifth
15 Amendment privilege.

16 Q. Isn't it true, Doctor, that in 1997,
17 you, for the first time, asserted this Fifth
18 Amendment privilege that you're asserting today
19 when you were asked to testify at a deposition?

20 A. On the advice of counsel, I
21 respectfully decline to answer based on my Fifth
22 Amendment privilege.

23 Q. And at that time in 1997, you had
24 knowledge of a grand jury investigation that was
25 ongoing and concerned the tobacco industry?

28

1 A. On the advice of counsel, I
2 respectfully decline to answer based on my Fifth
3 Amendment privilege.

4 Q. And at that time -- and at that time
5 you became aware that the grand jury, in part, was
6 investigating your participation in
7 tobacco-related issues?

8 A. On the advice of counsel, I
9 respectfully decline to answer based on my Fifth
10 Amendment privilege.

11 Q. As a result of your knowledge of that
12 grand jury investigation, Dr. Osdene, did you
13 retain a personal attorney who you believed to be
14 knowledgeable about grand jury investigations?

15 A. On the advice of counsel, I
16 respectfully decline to answer based on my Fifth
17 Amendment privilege.

18 Q. Is it true that at that time you
19 actually believed that the tobacco companies had
20 become politically unpopular in this country, and
21 that you believe that to be the case even today?

22 A. On the advice of counsel, I
23 respectfully decline to answer based on my Fifth
24 Amendment privilege.

25 Q. Isn't it true, Doctor, that because of

29

1 that political unpopularity, you and your lawyers
2 were concerned that the federal prosecutors and
3 the grand jury could rush to judgment, and could
4 possibly charge tobacco executives, like yourself,
5 with wrongdoing that did not actually occur?

6 MR. WESTBROOK: Objection.

7 THE WITNESS: On the advice of counsel,
8 I respectfully decline to answer based on my
9 Fifth Amendment privilege.

10 BY MR. MOLSTER:
11 Q. And isn't it that concern, this concern
12 that prosecutors might rush to judgment, that your
13 lawyer -- who is an expert on grand jury
14 proceedings -- advised you that you should err on
15 the side of caution, and that you should invoke
16 your Fifth Amendment privilege, and refuse to
17 answer questions about matters that you were
18 involved with while you worked at Philip Morris?

19 MR. WESTBROOK: Objection.

20 THE WITNESS: On the advice of counsel,
21 I respectfully decline to answer based on my
22 Fifth Amendment privilege.

23 BY MR. MOLSTER:

24 Q. And based on the advice you received
25 from your lawyers, did you make the decision to

30

1 accept that advice, and to err on the side of
2 caution, and invoke the Fifth Amendment privilege
3 to questions posed to you in prior depositions?

4 MR. WESTBROOK: Objection.

5 THE WITNESS: On the advice of counsel,
6 I respectfully decline to answer based on my
7 Fifth Amendment privilege.

8 BY MR. MOLSTER:

9 Q. Isn't it true that the reason you
10 originally invoked the Fifth Amendment privilege
11 against self-incrimination at a deposition was
12 your concern that federal prosecutors would be
13 unfair to you in the way they conducted their
14 investigation?

15 MR. WESTBROOK: Objection.

16 THE WITNESS: On the advice of counsel,
17 I respectfully decline to answer based on my
18 Fifth Amendment privilege.

19 BY MR. MOLSTER:

20 Q. Isn't that the reason, that concern,
21 that you have invoked the Fifth Amendment
22 privilege against self-incrimination in this
23 deposition, even though you know that your honest
24 answers would actually not incriminate you in
25 responding to those questions?

31

1 MR. WESTBROOK: Objection.

2 THE WITNESS: On the advice of counsel,
3 I respectfully decline to answer based on my
4 Fifth Amendment privilege.

5 BY MR. MOLSTER:

6 Q. Since you first asserted the Fifth
7 Amendment privilege in a deposition, you have been
8 told, have you not, that the grand jury
9 investigation of the tobacco industry has
10 terminated?

11 MR. WESTBROOK: Objection.

12 THE WITNESS: On the advice of counsel,
13 I respectfully decline to answer based on my
14 Fifth Amendment privilege.

15 BY MR. MOLSTER:

16 Q. And it's true, is it not, Dr. Osdene,
17 that you were never charged with a criminal
18 offense?

19 MR. WESTBROOK: Objection.

20 THE WITNESS: On the advice of counsel,

21 I respectfully decline to answer based on my
22 Fifth Amendment privilege.
23 BY MR. MOLSTER:
24 Q. And is it also true that Philip Morris
25 was never charged with a criminal offense?

32

1 MR. WESTBROOK: Objection.
2 THE WITNESS: On the advice of counsel,
3 I respectfully decline to answer based on my
4 Fifth Amendment privilege.
5 BY MR. MOLSTER:
6 Q. But you still decided to assert the
7 Fifth Amendment to all questions asked at this
8 deposition because it's still possible that some
9 prosecutor someplace might -- might choose to
10 pursue a politically-motivated investigation,
11 correct?

12 MR. WESTBROOK: Objection. Objection.
13 THE WITNESS: On the advice of counsel,
14 I respectfully decline to answer based on my
15 Fifth Amendment privilege.

16 BY MR. MOLSTER:
17 Q. For instance, a state prosecutor could
18 conceivably still choose to pursue a
19 politically-motivated investigation, correct?

20 MR. WESTBROOK: Objection.
21 THE WITNESS: On the advice of counsel,
22 I respectfully decline to answer based on my
23 Fifth Amendment privilege.

24 BY MR. MOLSTER:
25 Q. And it's for that reason that you've

33

1 taken the advice of your lawyer and decided to err
2 on the side of caution by asserting the Fifth
3 Amendment?

4 MR. WESTBROOK: Objection.
5 THE WITNESS: On the advice of counsel,
6 I respectfully decline to answer based on my
7 Fifth Amendment privilege.

8 BY MR. MOLSTER:
9 Q. Isn't it true, Dr. Osdene, that honest
10 answers to Mr. Westbrook's questions would not
11 incriminate you, because the truth is that you did
12 not engage in any wrongdoing while you were
13 employed at Philip Morris?

14 MR. WESTBROOK: Objection.
15 THE WITNESS: On the advice of counsel,
16 I respectfully decline to answer based on my
17 Fifth Amendment privilege.

18 BY MR. MOLSTER:
19 Q. And, in fact, as Mr. Westbrook asked
20 you questions here today, isn't it true that as
21 you listened to his questions, you knew that some
22 of his questions actually contained facts and
23 accusations that were false?

24 MR. WESTBROOK: Objection.
25 THE WITNESS: On the advice of counsel,

34

1 I respectfully decline to answer based on my
2 Fifth Amendment privilege.
3 BY MR. MOLSTER:
4 Q. You could not answer his questions and
5 tell him that his questions contained false

6 accusations and false information, but instead you
7 had to follow the advice of your attorney and
8 invoke the Fifth Amendment privilege against
9 self-incrimination?

10 MR. WESTBROOK: Objection.

11 THE WITNESS: On the advice of counsel,
12 I respectfully decline to answer based on my
13 Fifth Amendment privilege.

14 BY MR. MOLSTER:

15 Q. It's true, isn't it, that other than
16 answering some very basic background questions at
17 the beginning of the deposition, you've made the
18 decision, in consultation with your lawyer, to
19 invoke the Fifth Amendment privilege, regardless
20 of the question asked of you by Mr. Westbrook?

21 MR. WESTBROOK: Objection.

22 THE WITNESS: On the advice of counsel,
23 I respectfully decline to answer based on my
24 Fifth Amendment privilege.

25 BY MR. MOLSTER:

35

1 Q. And isn't it true, Doctor, that the
2 fact that you answered all of those questions by
3 invoking the Fifth Amendment does not, in reality,
4 reflect your belief that you or anyone else
5 connected to any tobacco company ever did anything
6 illegal or improper while you were employed at
7 Philip Morris?

8 MR. WESTBROOK: Objection.

9 THE WITNESS: On the advice of counsel,
10 I respectfully decline to answer based on my
11 Fifth Amendment privilege.

12 BY MR. MOLSTER:

13 Q. It's true, isn't it, Doctor, that as
14 Mr. Westbrook asked you questions, you actually
15 knew that you could give honest answers to those
16 questions that would be favorable to Philip
17 Morris?

18 MR. WESTBROOK: Objection.

19 THE WITNESS: On the advice of counsel,
20 I respectfully decline to answer based on my
21 Fifth Amendment privilege.

22 BY MR. MOLSTER:

23 Q. But you are not able to give answers
24 that provide that favorable testimony to Philip
25 Morris because of the advice that you've received

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1 from your attorneys to invoke the Fifth Amendment
2 privilege; is that correct?

3 MR. WESTBROOK: Objection.

4 THE WITNESS: On the advice of counsel,
5 I respectfully decline to answer based on my
6 Fifth Amendment privilege.

7 BY MR. MOLSTER:

8 Q. Are you aware that your -- excuse me.
9 Are you aware that your insistence on invoking the
10 Fifth Amendment in response to questions today has
11 the effect of denying Philip Morris and the other
12 tobacco companies the opportunity to conduct an
13 effective examination of you in this deposition?

14 MR. WESTBROOK: Objection.

15 THE WITNESS: On the advice of counsel,
16 I respectfully decline to answer based on my

17 Fifth Amendment privilege.
18 BY MR. MOLSTER:
19 Q. Isn't it true that Philip Morris had
20 nothing to do with your decision to invoke the
21 Fifth Amendment in this deposition?
22 MR. WESTBROOK: Objection.
23 THE WITNESS: On the advice of counsel,
24 I respectfully decline to answer based on my
25 Fifth Amendment privilege.

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1 BY MR. MOLSTER:
2 Q. That decision was made exclusively by
3 you and your lawyers, and Philip Morris had
4 nothing to do with it, correct?
5 MR. WESTBROOK: Objection.
6 THE WITNESS: On the advice of counsel,
7 I respectfully decline to answer based on my
8 Fifth Amendment privilege.
9 BY MR. MOLSTER:
10 Q. In connection with your first
11 deposition, isn't it true that when Philip Morris
12 first learned that it was your intention to invoke
13 the Fifth Amendment in that deposition, Philip
14 Morris attempted to convince you and your attorney
15 to reconsider that decision, and to answer all
16 questions in a complete and truthful fashion?
17 MR. WESTBROOK: Objection.
18 THE WITNESS: On the advice of counsel,
19 I respectfully decline to answer based on my
20 Fifth Amendment privilege.
21 BY MR. MOLSTER:
22 Q. In fact, in April of 1997, Irve Nathan,
23 counsel for Philip Morris, sent a letter to your
24 lawyer at that time, urging you to cooperate and
25 not take the Fifth Amendment privilege; is that

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1 correct?
2 MR. WESTBROOK: Objection.
3 THE WITNESS: On the advice of counsel,
4 I respectfully decline to answer based on my
5 Fifth Amendment privilege.
6 BY MR. MOLSTER:
7 Q. And there have been several other
8 letters that you have -- you or your lawyers have
9 received from Philip Morris, urging you to
10 cooperate and not take the Fifth Amendment,
11 correct?
12 MR. WESTBROOK: Objection.
13 THE WITNESS: On the advice of counsel,
14 I respectfully decline to answer based on my
15 Fifth Amendment privilege.
16 BY MR. MOLSTER:
17 Q. And isn't it true that Philip Morris
18 ultimately took you to arbitration over the
19 questions of whether you should testify fully to
20 questions put to you in a deposition?
21 MR. WESTBROOK: Objection.
22 THE WITNESS: On the advice of counsel,
23 I respectfully decline to answer based on my
24 Fifth Amendment privilege.
25 BY MR. MOLSTER:

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1 Q. And this was because Philip Morris

2 believed that the severance agreement that Philip
3 Morris had with you required you to cooperate with
4 Philip Morris in the defense of these cases, and
5 that your Fifth Amendment -- by asserting your
6 Fifth Amendment privilege, you failed to meet that
7 obligation to cooperate fully, and that you should
8 have to testify in this -- in depositions and
9 answer all questions truthfully?

10 MR. WESTBROOK: Objection.

11 THE WITNESS: On the advice of counsel,
12 I respectfully decline to answer based on my
13 Fifth Amendment privilege.

14 BY MR. MOLSTER:

15 Q. And isn't it true, Doctor, that at that
16 arbitration, the arbitrator ruled against Philip
17 Morris, and in your favor?

18 MR. WESTBROOK: Objection.

19 THE WITNESS: On the advice of counsel,
20 I respectfully decline to answer based on my
21 Fifth Amendment privilege.

22 BY MR. MOLSTER:

23 Q. And the arbitrator ruled that you could
24 assert the Fifth Amendment and still receive
25 benefits under your Philip Morris severance

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1 package, correct?

2 MR. WESTBROOK: Objection.

3 THE WITNESS: On the advice of counsel,
4 I respectfully decline to answer based on my
5 Fifth Amendment privilege.

6 BY MR. MOLSTER:

7 Q. It's true, is it not, that in
8 anticipation of this deposition, Philip Morris
9 sent another letter to your attorney asking you to
10 testify fully in this deposition?

11 A. On the advice of counsel, I
12 respectfully decline to answer based on my Fifth
13 Amendment privilege.

14 Q. Now, let me show you what's marked as
15 Deposition Exhibit 8, Dr. Osdene. And, in fact,
16 isn't that the letter sent to your lawyer, Gary
17 Nunes, from Mike Szymanczyk, who is president and
18 chief executive officer of Philip Morris on May
19 23, 2000?

20 A. On the advice of counsel, I
21 respectfully decline to answer based on my Fifth
22 Amendment privilege.

23 Q. And isn't it -- in that letter -- let
24 me just read a portion of it to you --
25 Mr. Szymanczyk says that -- refers to the fact

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1 that he understands you're going to assert the
2 Fifth Amendment right. And he says, "I understand
3 that this issue has risen before in other cases,
4 and that Philip Morris has always expressed its
5 strong objection to Dr. Osdene taking the Fifth
6 Amendment. In Falise, as in those cases, Philip
7 Morris expects that all current and former
8 employees will assist by testifying fully and
9 truthfully when called upon to do so."

10 Do you see that?

11 A. On the advice of counsel, I
12 respectfully decline to answer based on my Fifth

13 Amendment privilege.
14 Q. The letter goes on to say that, "Philip
15 Morris strongly believes that full and truthful
16 testimony by Dr. Osdene will be helpful to the
17 jury's understanding of the case. Assertion of
18 the Fifth Amendment, on the other hand, may lead
19 to the incorrect impression that Dr. Osdene has
20 something to hide. I understand that our lawyers
21 believe that it is improper to use a former
22 employee's assertion of the Fifth Amendment
23 against Philip Morris at trial. If, however, the
24 Judge permits plaintiffs to use Dr. Osdene's
25 assertion of the Fifth Amendment, it could lead

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1 jurors to make inaccurate and harmful assumptions
2 about Dr. Osdene's conduct at Philip Morris."
3 Isn't that what Mr. Szymanczyk put in
4 his letter to you, or to your lawyer, dated May
5 23, 2000?

6 MR. WESTBROOK: Objection.
7 THE WITNESS: On the advice of counsel,
8 I respectfully decline to answer based on my
9 Fifth Amendment privilege.

10 BY MR. MOLSTER:

11 Q. And he says, then, "On behalf of Philip
12 Morris, I request that Dr. Osdene not assert the
13 Fifth Amendment at his deposition in the Falise
14 case. Dr. Osdene's full and truthful testimony is
15 of vital importance to Philip Morris."

16 Isn't that what he wrote to your
17 lawyer?

18 MR. NUNES: Objection.
19 THE WITNESS: On the advice of counsel,
20 I respectfully decline to answer based on my
21 Fifth Amendment privilege.

22 BY MR. MOLSTER:

23 Q. Isn't it true, Dr. Osdene, that Philip
24 Morris has done everything humanly possible to
25 convince you and your attorney to reconsider the

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1 decision to invoke the Fifth Amendment, and to
2 answer all questions in a complete and truthful
3 fashion?

4 MR. WESTBROOK: Objection.
5 THE WITNESS: On the advice of counsel,
6 I respectfully decline to answer based on my
7 Fifth Amendment privilege.

8 BY MR. MOLSTER:

9 Q. You've asserted the Fifth Amendment to
10 virtually every question that has been put to you
11 in this deposition, correct?

12 A. On the advice of counsel, I
13 respectfully decline to answer based on my Fifth
14 Amendment privilege.

15 Q. And you will take the Fifth Amendment
16 on any question put to you that relates in any way
17 to the tobacco industry?

18 A. On the advice of counsel, I
19 respectfully decline to answer based on my Fifth
20 Amendment privilege.

21 Q. And you will take the Fifth Amendment
22 on every question you are asked here, even if the
23 answer does not incriminate you or others?

24 MR. WESTBROOK: Objection.
25 THE WITNESS: On the advice of counsel,

44

1 I respectfully decline to answer based on my
2 Fifth Amendment privilege.

3 BY MR. MOLSTER:

4 Q. For example, Dr. Osdene, do you smoke
5 cigarettes?

6 A. On the advice of counsel, I
7 respectfully decline to answer based on my Fifth
8 Amendment privilege.

9 Q. Did Philip Morris manufacture
10 cigarettes while you were employed at Philip
11 Morris?

12 A. On the advice of counsel, I
13 respectfully decline to answer based on my Fifth
14 Amendment privilege.

15 Q. Did Philip Morris manufacture the
16 Marlboro brand of cigarettes while you were
17 employed at Philip Morris?

18 A. On the advice of counsel, I
19 respectfully decline to answer based on my Fifth
20 Amendment privilege.

21 Q. While you were employed at Philip
22 Morris, did Christmas fall on December 25th?

23 MR. WESTBROOK: Objection.

24 THE WITNESS: On the advice of counsel,
25 I respectfully decline to answer based on my

45

1 Fifth Amendment privilege.

2 BY MR. MOLSTER:

3 Q. Did you invoke the Fifth Amendment on
4 these simple questions because you've decided to
5 err on the side of caution, and invoke the Fifth
6 Amendment as to anything -- as to literally
7 anything that relates to the tobacco industry?

8 MR. WESTBROOK: Objection.

9 THE WITNESS: On the advice of counsel,
10 I respectfully decline to answer based on my
11 Fifth Amendment privilege.

12 BY MR. MOLSTER:

13 Q. Mr. Westbrook asked you some questions
14 about some documents and about asbestos. And I
15 would like to ask you some questions, as well.

16 Were you aware of Dr. Selikoff and
17 Dr. Selikoff's work while you were employed at
18 Philip Morris?

19 A. On the advice of counsel, I
20 respectfully decline to answer based on my Fifth
21 Amendment privilege.

22 Q. Isn't it true that you're not aware of
23 any secret research done by Philip Morris with
24 respect to the issue of asbestos and smoking?

25 A. On the advice of counsel, I

46

1 respectfully decline to answer based on my Fifth
2 Amendment privilege.

3 Q. Isn't it true that Philip Morris only
4 knew what was publicly available with respect to
5 the issue of asbestos exposure and smoking?

6 A. On the advice of counsel, I
7 respectfully decline to answer based on my Fifth
8 Amendment privilege.

9 Q. And isn't it true that Philip Morris
10 was not the appropriate company to be out doing
11 research on the combined effects of asbestos
12 exposure and smoking, since Philip Morris was a
13 manufacturer of tobacco, and did not have
14 sufficient expertise to do that kind of complex
15 research?
16 A. On the advice of counsel, I
17 respectfully decline to answer based on my Fifth
18 Amendment privilege.
19 Q. The issue of asbestos exposure and
20 smoking was well known to the government certainly
21 by the time Dr. Selikoff's report was first made
22 public in 1967 or 1968?
23 A. On the advice of counsel, I
24 respectfully decline to answer based on my Fifth
25 Amendment privilege.

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1 Q. And the government never asked Philip
2 Morris to do anything regarding any asbestos
3 warnings, correct?
4 A. On the advice of counsel, I
5 respectfully decline to answer based on my Fifth
6 Amendment privilege.
7 Q. In fact, while you were at Philip
8 Morris, didn't you become aware that the FTC, the
9 Federal Trade Commission; and OSHA, the office of
10 Occupational Safety and Health Administration;
11 both specifically were aware of the asbestos
12 issue?
13 A. On the advice of counsel, I
14 respectfully decline to answer based on my Fifth
15 Amendment privilege.
16 Q. The U.S. Government never suggested
17 that it was the obligation of the tobacco industry
18 to warn asbestos workers of potential health
19 effects of asbestos exposure?
20 MR. WESTBROOK: Objection.
21 THE WITNESS: On the advice of counsel,
22 I respectfully decline to answer based on my
23 Fifth Amendment privilege.
24 BY MR. MOLSTER:
25 Q. But it's true, is it not, that while

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1 you were at Philip Morris, the U.S. Government did
2 require the tobacco industry to warn consumers
3 concerning the health effects of smoking?
4 A. On the advice of counsel, I
5 respectfully decline to answer based on my Fifth
6 Amendment privilege.
7 Q. And Philip Morris followed the
8 requirements of the U.S. Government concerning
9 cigarette warning labels at all times?
10 MR. WESTBROOK: Objection.
11 THE WITNESS: On the advice of counsel,
12 I respectfully decline to answer, based on my
13 Fifth Amendment privilege.
14 BY MR. MOLSTER:
15 Q. Philip Morris did not have any
16 expertise in asbestos issues because Philip Morris
17 was not an asbestos manufacturer, correct?
18 A. On the advice of counsel, I
19 respectfully decline to answer based on my Fifth

20 Amendment privilege.
21 Q. Philip Morris never concealed anything
22 from people exposed to asbestos, correct?
23 MR. WESTBROOK: Objection.
24 THE WITNESS: On the advice of counsel,
25 I respectfully decline to answer based on my

49

1 Fifth Amendment privilege.
2 BY MR. MOLSTER:
3 Q. You never met with anybody from Johns
4 Manville while you were employed at Philip Morris,
5 did you?
6 A. On the advice of counsel, I
7 respectfully decline to answer based on my Fifth
8 Amendment privilege.
9 Q. And the same is true for the Johns
10 Manville Personal Injury Trust?
11 A. On the advice of counsel, I
12 respectfully decline to answer based on my Fifth
13 Amendment privilege.
14 Q. You never said anything to anyone from
15 Johns Manville or the Johns Manville Personal
16 Injury Trust regarding asbestos exposure and
17 smoking; isn't that correct?
18 A. On the advice of counsel, I
19 respectfully decline to answer based on my Fifth
20 Amendment privilege.
21 Q. And you never made any statements --
22 strike that.
23 And you never -- you don't know of
24 anyone from Philip Morris who ever made any such
25 statements to Johns Manville or the Johns Manville

50

1 Personal Injury Trust?
2 MR. WESTBROOK: Objection.
3 THE WITNESS: On the advice of counsel,
4 I respectfully decline to answer based on my
5 Fifth Amendment privilege.
6 BY MR. MOLSTER:
7 Q. You never took any steps to prevent
8 Johns Manville of the Trust -- or the Trust from
9 suing Philip Morris or the other tobacco
10 companies, and you don't know anyone from Philip
11 Morris who has, correct?
12 MR. WESTBROOK: Objection.
13 THE WITNESS: On the advice of counsel,
14 I respectfully decline to answer based on my
15 Fifth Amendment privilege.
16 BY MR. MOLSTER:
17 Q. You never misrepresented the risks of
18 smoking to the claimants under the Johns Manville
19 Personal Injury Trust, correct?
20 MR. WESTBROOK: Objection.
21 THE WITNESS: On the advice of counsel,
22 I respectfully decline to answer based on my
23 Fifth Amendment privilege.
24 BY MR. MOLSTER:
25 Q. And you never did anything to -- strike

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1 that.
2 You never said anything to any of the
3 claimants under the Johns Manville Personal Injury
4 Trust with respect to asbestos exposure and

5 smoking?
6 A. On the advice of counsel, I
7 respectfully decline to answer, based on my Fifth
8 Amendment privilege.
9 Q. And you don't know anyone from Philip
10 Morris who has made such statements, correct, to
11 the claimants under the Johns Manville Personal
12 Injury Trust?
13 A. On the advice of counsel, I
14 respectfully decline to answer based on my Fifth
15 Amendment privilege.
16 Q. During your time at Philip Morris,
17 Philip Morris never told asbestos-exposed
18 individuals that it was safe to smoke, correct?
19 MR. WESTBROOK: Objection.
20 THE WITNESS: On the advice of counsel,
21 I respectfully decline to answer based on my
22 Fifth Amendment privilege.
23 MR. NUNES: Can we take a short break?
24 THE VIDEOGRAPHER: All right. The time
25 is approximately 3:53 p.m., and we are off
52
1 the record.
2
3 (Discussion off the record)
4
5 The time is approximately 3:59 p.m.,
6 and are back on the record.
7 MR. NUNES: Just to state on the record
8 that, prior to the deposition, there was an
9 agreement as to the length of the deposition.
10 The length is now being exceeded, and counsel
11 for Philip Morris has asked for additional
12 time. On behalf of the witness, who, as a
13 result of health considerations, we have
14 agreed to let it go forward an additional 10
15 minutes. And that is based upon the fact,
16 also, that I understand there is no objection
17 to that from Mr. Westbrook, counsel for the
18 plaintiffs.
19 MR. WESTBROOK: That's correct, if we
20 can get it completed in light of the fact
21 that it was announced back in March that this
22 would be a 45-minute deposition.
23 MR. MOLSTER: Well, let's make the
24 record -- make sure the record is clear. My
25 understanding was it was 45 minutes for each
53
1 side, not that it was 45 minutes total.
2 In any event, you-all -- as we've
3 discussed off the record, I can't make you
4 do, obviously, anything. I do not acquiesce
5 to be -- to stopping 10 minutes from now in
6 my questions of Dr. Osdene. Ed showed him
7 seven documents. I want to examine him on
8 those seven documents. I'm happy to limit it
9 as much as possible. But, I mean, I think
10 I've only taken 20-some minutes, but
11 anyway...
12 MR. NUNES: But just to state for the
13 record -- because I wanted to make sure that
14 we afforded every consideration -- the
15 agreement was we were not going to be

16 rehashing any items that had been covered in
17 the deposition that was taken back in May of
18 1997, I believe. And I think that most of
19 those questions had been asked during that
20 deposition.

21 MR. MOLSTER: I don't -- nobody ever
22 told me that agreement, but in any event...

23 MR. WESTBROOK: And just while we're on
24 the record before you start asking Dr. Osdene
25 questions, we'll mark -- and you can mark it

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1 later -- as Exhibit 9 a letter from Mr. Nunes
2 to me, a copy to defense counsel, which set
3 forth the parameters of this deposition,
4 including paragraph two, quote, "The
5 deposition shall be limited to 45 minutes,"
6 unquote. Put an eight on that, I believe.

7 MR. MOLSTER: Well, as I said, my
8 understanding was 45 minutes for you, and
9 then we've got an opportunity to also ask
10 questions. But, in any event, we're spending
11 a lot more time arguing about it than we
12 would in me asking my questions.

13 Can we go?

14 BY MR. MOLSTER:

15 Q. Okay. Doctor, Exhibit 2, if you would
16 take a look at Exhibit 2, it's the memo dated
17 March 7, 1968 from Helmut Wakeham to Mr. Goldsmith
18 that Mr. Westbrook asked you about.

19 Are you aware that at the time
20 Mr. Wakeham wrote that memo, he had just read the
21 Selikoff study that had been widely reported in
22 the press?

23 MR. WESTBROOK: Objection.

24 THE WITNESS: On the advice of counsel,
25 I respectfully decline to answer based on my

55

1 Fifth Amendment privilege.

2 BY MR. MOLSTER:

3 Q. And isn't true at that time, Doctor, at
4 the time of the memo, that Dr. Wakeham and Philip
5 Morris had done no independent research to
6 determine the relationship between asbestos
7 exposure and tobacco use?

8 MR. WESTBROOK: Objection.

9 THE WITNESS: On the advice of counsel,
10 I respectfully decline to answer based on my
11 Fifth Amendment privilege.

12 BY MR. MOLSTER:

13 Q. And it's true, is it not, that Philip
14 Morris had left all warning issues to the United
15 States government, and did exactly what the United
16 States government told Philip Morris to do with
17 respect to warning consumers, be they asbestos
18 workers or otherwise?

19 MR. WESTBROOK: Objection.

20 THE WITNESS: On the advice of counsel,
21 I respectfully decline to answer based on my
22 Fifth Amendment privilege.

23 BY MR. MOLSTER:

24 Q. If you look at Exhibit 3, please,
25 Doctor, which is entitled "Supplementary Report on

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1 Discussions with Osdene," that Mr. Westbrook asked
2 you about. In Paragraph B, which he drew your
3 attention to, it makes a reference to relations
4 with lawyers.

5 Isn't it true, Dr. Osdene, that your
6 work was never impacted by the lawyers while you
7 were at Philip Morris?

8 A. On the advice of counsel, I
9 respectfully decline to answer based on my Fifth
10 Amendment privilege.

11 Q. And isn't it also true that, with
12 respect to attorneys dealing with the government,
13 attorneys regularly represent Philip Morris and
14 other manufacturers in all kinds of different
15 industries with the United States Government,
16 correct?

17 A. On the advice of counsel, I
18 respectfully decline to answer based on my Fifth
19 Amendment privilege.

20 Q. And there's nothing wrong with lawyers
21 helping companies deal with the United States
22 Government, correct?

23 MR. WESTBROOK: Objection.

24 THE WITNESS: On the advice of counsel,
25 I respectfully decline to answer based on my

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1 Fifth Amendment privilege.

2 BY MR. MOLSTER:

3 Q. With respect to Paragraph F -- which
4 Mr. Westbrook asked you about -- regarding
5 relations with CTR, one of the issues at Philip
6 Morris was whether funds should be available to
7 Philip Morris directly, or whether they should go
8 to the CTR; is that correct?

9 MR. WESTBROOK: Objection.

10 THE WITNESS: On the advice of counsel,
11 I respectfully decline to answer based on my
12 Fifth Amendment privilege.

13 BY MR. MOLSTER:

14 Q. If you take a look at Exhibit Number 4,
15 which is a memo from Peter Lee that Mr. Westbrook
16 showed you, isn't it true that this document was
17 not done for Philip -- that Mr. Lee did not do
18 this work for Philip Morris?

19 A. On the advice of counsel, I
20 respectfully decline to answer based on my fifth
21 Amendment privilege.

22 Q. And isn't it true that this document
23 was not received by Philip Morris until after the
24 Falise case was filed?

25 A. On the advice of counsel, I

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1 respectfully decline to answer based on my Fifth
2 Amendment privilege.

3 Q. And isn't it true that you never had
4 any knowledge of this memo of Dr. Lee while you
5 were working at Philip Morris?

6 A. On the advice of counsel, I
7 respectfully decline to answer based on my Fifth
8 Amendment privilege.

9 Q. Let's take a look at Exhibit 5, if you
10 would, which Mr. Westbrook showed you. And isn't
11 it true that the attachment to that document

12 starting on -- dated September 17, 1982, is
13 actually a report on events that are happening in
14 the United Kingdom?

15 A. On the advice of counsel, I
16 respectfully decline to answer based on my Fifth
17 Amendment privilege.

18 Q. And this document, in fact, has nothing
19 to do with events that are happening in the United
20 States?

21 MR. WESTBROOK: Objection.

22 THE WITNESS: On the advice of counsel,
23 I respectfully decline to answer based on my
24 Fifth Amendment privilege.

25 BY MR. MOLSTER:

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1 Q. With respect to Exhibit 6, which
2 Mr. Westbrook showed you -- a letter which
3 purports to be from Professor Abood to you, dated
4 March of 1983 -- isn't it true -- strike that.

5 There are some references in this
6 letter to less hazardous cigarettes. And my
7 question is: Isn't it true that the Surgeon
8 General has recommended that if people are going
9 to smoke, then they should smoke low tar
10 cigarettes?

11 MR. WESTBROOK: Objection.

12 THE WITNESS: On the advice of counsel,
13 I respectfully decline to answer based on my
14 Fifth Amendment privilege.

15 BY MR. MOLSTER:

16 Q. And that's also true for the British
17 Government and governments from a number of other
18 countries?

19 MR. WESTBROOK: Objection.

20 THE WITNESS: On the advice of counsel,
21 I respectfully decline to answer based on my
22 Fifth Amendment privilege.

23 BY MR. MOLSTER:

24 Q. And, in fact, there are many studies
25 that support that conclusion?

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1 MR. WESTBROOK: Objection.

2 THE WITNESS: On the advice of counsel,
3 I respectfully decline to answer based on my
4 Fifth Amendment privilege.

5 BY MR. MOLSTER:

6 Q. And, finally, Doctor, if you look at
7 Exhibit 7, which Mr. Westbrook showed you, which
8 is -- purports to be a memo dated 1973 from
9 R. Fagan to Dr. Wakeham, there is a reference in
10 there to the Tobacco Working Group.

11 Isn't the Tobacco Working Group a group
12 that was comprised of industry representatives, as
13 well as government representatives?

14 A. On the advice of counsel, I
15 respectfully decline to answer based on my Fifth
16 Amendment privilege.

17 Q. And all this document is, is just a
18 reference to a list of possible research projects
19 that were being considered?

20 MR. WESTBROOK: Objection.

21 THE WITNESS: On the advice of counsel,
22 I respectfully decline to answer based on my

23 Fifth Amendment privilege.
 24 BY MR. MOLSTER:
 25 Q. And this document is dated in August of 61
 1 1973 after the Selikoff report had been issued in
 2 1968?
 3 A. On the advice of counsel, I
 4 respectfully decline to answer based on my Fifth
 5 Amendment privilege.
 6 Q. And the Selikoff report got very wide
 7 publicity, didn't it?
 8 MR. WESTBROOK: Objection.
 9 THE WITNESS: On the advice of counsel,
 10 I respectfully decline to answer based on my
 11 Fifth Amendment privilege.
 12 BY MR. MOLSTER:
 13 Q. And, in fact, what this document
 14 indicates is that Selikoff was on the tobacco
 15 working group, and he could give -- strike that.
 16 Isn't it true that Dr. Selikoff was on
 17 the Tobacco Working Group. And what this document
 18 references, is the fact that he will be able to --
 19 that Selikoff will be able to give input into
 20 these issues?
 21 MR. WESTBROOK: Objection.
 22 THE WITNESS: On the advice of counsel,
 23 I respectfully decline to answer based on my
 24 Fifth Amendment privilege.
 25 BY MR. MOLSTER: 62
 1 Q. And isn't it true that Mr. Fagan never
 2 told you -- nor did anybody else at Philip
 3 Morris -- that he knew people in the industry who
 4 were not interested in finding the truth?
 5 MR. WESTBROOK: Objection.
 6 THE WITNESS: On the advice of counsel,
 7 I respectfully decline to answer based on my
 8 Fifth Amendment privilege.
 9 MR. MOLSTER: Okay. I will -- have I
 10 gone my 10 minutes?
 11 MR. NUNES: Just about.
 12 MR. MOLSTER: All right. Thank you,
 13 Dr. Osdene.
 14
 15
 16
 17 F U R T H E R
 18 E X A M I N A T I O N
 19 BY MR. WESTBROOK:
 20 Q. Dr. Osdene, on behalf of the plaintiff,
 21 I have one final question.
 22 Dr. Osdene, isn't it true that the
 23 attorney who has advised you not to answer
 24 questions about your activities at Philip Morris
 25 because you may incriminate yourself is being paid 63
 1 by Philip Morris?
 2 A. On the advice of counsel, I
 3 respectfully decline to answer based on my Fifth
 4 Amendment privilege.
 5 MR. WESTBROOK: Nothing further.
 6 MR. NUNES: Thanks. I appreciate the
 7 cooperation.

8 THE VIDEOGRAPHER: If there are no
9 further matters, the time is approximately
10 4:09 p.m., and this deposition is concluded.

11
12 (Osdene Exhibit Numbers 8 and 9 marked
13 for identification)

14
15 (Signature waived)

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1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, Lisa M. Blair, Notary Public in and for
3 the Commonwealth of Virginia at Large, and whose
4 commission expires October 31, 2001, do certify
5 that the aforementioned appeared before me, was
6 sworn by me, and was thereupon examined by
7 counsel; and that the foregoing is a true,
8 correct, and full transcript of the testimony
9 adduced.

10 I further certify that I am neither related
11 to nor associated with any counsel or party to
12 this proceeding, nor otherwise interested in the
13 event thereof.

14 Given under my hand and notarial seal at
15 Charlottesville, Virginia, this 20th day of July,
16 2000.

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21 Lisa M. Blair, Court Reporter, Notary Public
22 Commonwealth of Virginia at Large
23
24
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